

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:FSH:BOS:TL-N-6771-00

BJLaterman

date:

to: Thomas J. Higgins, Team Manager
LMSB: Heavy Manufacturing, Construction
& Transportation
Group 1653

from: Associate Area Counsel, LMSB, Boston

subject: [REDACTED]
[REDACTED] through [REDACTED] Statute Extensions
Statute Expiration: [REDACTED]

This is in response to your request that we provide advice regarding extending the statute of limitations and solicitation of Form 870, (Waiver of Restrictions on Assessment and Collection of Deficiency in Tax) for the above-mentioned consolidated group's [REDACTED] through [REDACTED] taxable years.

[REDACTED], a Massachusetts Corporation, was the parent corporation of an affiliated group of corporations which filed consolidated federal income tax returns for the taxable years [REDACTED] and [REDACTED]. On [REDACTED], [REDACTED]'s Board of Directors voted to change the name of the corporation to [REDACTED]. The name change was subsequently approved by the shareholders on [REDACTED]. On [REDACTED], Articles of Amendment, changing [REDACTED]'s name to [REDACTED], were filed with the Secretary of the Commonwealth of Massachusetts. [REDACTED] uses the same EIN number as [REDACTED]. The [REDACTED] consolidated income tax return of the group was filed by [REDACTED] (FKA [REDACTED]).

Generally, the common parent, with certain exceptions not applicable here, is the sole agent for each member of the group, duly authorized to act in its own name in all matters relating to the tax liability for the consolidated return year. Treas. Reg. § 1.1502-77(a). The common parent in its name will give waivers, and any waiver so given, shall be considered as having also been given or executed by each such subsidiary. Treas. Reg. § 1.1502-77(a). Thus, generally the common parent is the proper party to sign consents, including:

(1) the Form 870 waiver; and (2) the Form 872 to extend the period of limitations, for all members in the group. Treas. Reg. § 1.1502-77(a). Furthermore, the provisions of Treas. Reg. § 1.1502-77(a) shall apply whether or not a consolidated return is made for any subsequent year, and whether or not one or more subsidiaries have become or have ceased to be members of the group at any time.

Treas. Reg. § 1.1502-77(c) provides that, unless the District Director agrees to the contrary, an agreement entered into by the common parent extending the time within which an assessment may be made in respect of the tax for a consolidated return year, shall be applicable to each corporation which was a member of the group during any part of such taxable year. The common parent and each subsidiary which was a member of the consolidated group during any part of the consolidated return year is severally liable for the tax for such year. Treas. Reg. § 1.1502-6(a).

In this case, the common parent, [REDACTED], now known as [REDACTED], is still in existence and, therefore, it is still the agent for the consolidated group (in existence in [REDACTED] through [REDACTED]) under the provisions of Treas. Reg. § 1.1502-77(a). The caption on the Forms 872 and 870 should be: [REDACTED] formerly known as [REDACTED]. * At the bottom of the page you should add: * [REDACTED] formerly known as [REDACTED] has executed the Form 872 as agent for the [REDACTED] formerly known as [REDACTED] consolidated group for its [REDACTED], [REDACTED] and [REDACTED] taxable years. Therefore, based on the facts provided we conclude that: (1) a Form 872 executed by a current officer of [REDACTED], the still existing parent of the group for the [REDACTED] through [REDACTED] taxable years, will extend the period for assessment of tax for said taxable years; and (2) a Form 870 executed by a current officer of [REDACTED] will also waive restrictions on assessment and collection for the [REDACTED] through [REDACTED] taxable years.

Furthermore, I.R.C. § 6501(c)(A)(B) provides that the Service shall notify the taxpayer of their right: 1) to refuse to extend the period of limitations; or 2) to limit such extension to particular issues; or 3) to limit the extension to a particular period of time. This notice must be provided each time an extension is requested.

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If we can be of any further assistance, please feel free to contact the undersigned at 617-565-7855.

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